

Trustee Companies Amendment Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Trustee Companies Act 1964*:

- (a) to enable a trustee company to recover from clients amounts of goods and services tax (*GST*) payable in respect of services supplied by the trustee company, and
- (b) to make it clear that restrictions relating to the acquisition of relevant interests in shares in a trustee company do not apply to an acquisition of interests in shares by the trustee company in itself, and
- (c) to enable savings and transitional regulations to be made.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the amendments relating to the recovery of GST costs on 1 July 2000 and for the commencement of the other amendments on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Trustee Companies Act 1964* set out in Schedule 1.

Schedule 1 [1] inserts definitions of *GST* and *New Tax System Price Exploitation law*.

Schedule 1 [2] inserts proposed section 19F. The proposed section enables a trustee company to charge, or recover, the amount of any GST payable in respect of services supplied by it as a trustee company. That amount is in addition to other fees or charges that may be charged by the trustee company. The limits on other fees or charges do not prevent the amount of GST being recovered, however it is made clear that the amount recoverable remains subject to other law preventing price exploitation. The charging of amounts for GST before the commencement of the proposed section is validated if it would have been valid if the proposed section had been in force.

Schedule 1 [3] makes it clear that the restrictions on the acquisition of more than a prescribed percentage of shares by a person in a trustee company do not apply to acquisitions by the trustee company of shares in itself or that result in a trustee company acquiring shares in itself. The restriction currently applies where, as a result of an acquisition of shares, a person is entitled to a certain percentage of the voting shares in a company. A person is entitled to voting shares if the person has a relevant interest in those shares within the meaning of the *Companies (Acquisition of Shares) (New South Wales) Code*. Since the commencement of the *Corporations (New South Wales) Act 1990* this includes a reference to the corresponding provisions of the *Corporations Law*. Consequently, provisions of the *Corporations Law* that provide that a body corporate may acquire a relevant interest in its own securities may apply to trustee companies. This may include a situation where, under that Law, a body corporate is taken to have acquired an interest in itself if another person (such as a director) acquires an interest in shares.

Schedule 1 [4] enables savings and transitional regulations to be made.